

EXHIBIT 14

14 - DrAlexanderVSergienko_Rough

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 CAPELLA PHOTONICS, INC.)
5 Plaintiff,) Case No.:
6 vs.) 2:20-cv-00076-JRG
7 FUJITSU NETWORK)
8 COMMUNICATIONS, INC.,)
9 Defendant.)
10 CAPELLA PHOTONICS, INC.,)
11 Plaintiff,) Case No.:
12 vs.) 2:20-cv-00077-JRG
13 INFINERA CORPORATION, et al.,)
14 Defendants.)
15

16 DEPOSITION OF:
17 ALEXANDER VLADIMIR SERGIENKO, Ph.D.
18 THURSDAY, APRIL 15, 2021
19 12:06 p.m. Eastern Standard Time
20

21 REPORTED BY:
22 Vickie Blair

14 - DrAlexanderVSergienko_Rough
23 CSR No. 8940, RPR-CRR
24 JOB NO. 4542988
25 PAGES 1 - 192

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1 Deposition of ALEXANDER VLADIMIR SERGIENKO, Ph.D., the
2 witness, taken on behalf of the Plaintiff, on Thursday,
3 April 15, 2021, 12:06 p.m. Eastern Standard Time, before
4 VICKIE BLAIR, CSR No. 8940, RPR-CRR.

5

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7

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08:42:20 1 Remote Deposition; Thursday, April 15, 2021

08:42:20 2 12:06 p.m. Eastern Standard Time

08:42:20 3 ---000---

09:06:06 4

09:06:09 5 VIDEOGRAPHER MILLER: Good afternoon.

09:06:09 6 We're going on the record at 12:06 p.m.

09:06:12 7 Eastern Standard Time on April 15, 2021.

09:06:18 8 Please note the microphones are very, very

09:06:20 9 sensitive, and may pick up whispering; however, please

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09:06:24 10 speak slowly with your voices up all the times. Please
09:06:28 11 silence all cell phones and place away from microphones
09:06:31 12 as they can interfere with deposition audio.

09:06:35 13 Audio and video recording will continue to
09:06:38 14 take place unless all parties agree to go off the
09:06:38 15 record.

09:06:38 16 This is media number one of the video
09:06:41 17 recorded deposition of Dr. Alexander Sergienko taken by
09:06:47 18 counsel for defendants in the matter of Capella
09:06:50 19 Photonics, Inc., vs. Fujitsu Network Communications,
09:06:50 20 Inc. Case number 2:20-cv-00076-JRG.

09:07:04 21 Second caption taken by counsel for
09:07:06 22 defendants in the matter of Capella Photonics, Inc.,
09:07:11 23 vs. Infinera Corporation Tellabs, Inc., case number
09:07:11 24 2:20-cv-00077-JRG, filed in United States District
09:07:11 25 Court of the Eastern District of Texas, Marshall

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09:07:11 1 Division.

09:07:11 2 This deposition is taking place via
09:07:40 3 Veritext Virtual and all participants are attending
09:07:41 4 remotely.

09:07:41 5 My name is Brandon Miller from the firm
09:07:44 6 Veritext Legal Solutions. I'm the videographer.

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09:07:48 7 The court reporter is Vickie Blair from

09:07:49 8 the firm Veritext Legal Solutions.

09:07:51 9 I'm not related to a party in this action

09:07:54 10 nor am I financially interested in the outcome.

09:07:57 11 Counsel and all present in the room and

09:07:58 12 everyone attending remotely will now state their

09:08:01 13 appearances and affiliation for the record, beginning

09:08:03 14 with the noticing attorney, and the witness can be

09:08:05 15 sworn in.

09:08:06 16 Thank you.

09:08:06 17 MR. GAUSTAD: This is John Gaustad of

09:08:08 18 Baker Botts LLP on behalf of the Infinera defendants.

09:08:11 19 MR. BROWAND: And this is Nathaniel

09:08:15 20 Browand from Milbank LLP on behalf of defendant Fujitsu

09:08:21 21 Network Communications, Inc.

09:08:31 22 THE REPORTER: Mr. Eisenberg, you need to

09:08:33 23 unmute.

09:08:34 24 MR. EISENBERG: This is Jason Eisenberg

09:08:36 25 from Sterne Kessler Goldstein & Fox on behalf of

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09:08:41 1 Capella Photonics, Inc.

09:08:43 2 MR. BECKER: Sorry, I was on mute.

09:08:45 3 This is Robert Becker from Manatt, Phelps

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09:08:48 4 & Phillips on behalf of Capella, Inc., and the witness.

09:08:50 5 I also want to lodge an objection. There
09:08:52 6 was an agreement with Fujitsu's counsel that this
09:08:57 7 deposition would not proceed, and it was surprising for
09:09:00 8 Fujitsu to announce that it was proceeding with the
09:09:02 9 deposition, despite our agreement, and so I object to
09:09:12 10 that.

09:09:12 11 MR. BROWAND: And I'll -- I'll state on
09:09:18 12 the record that the notice of Dr. Sergienko's
09:09:21 13 deposition was noticed in both the Fujitsu and Infinera
09:09:23 14 cases, and there's only a single report at issue in
09:09:25 15 both cases, and the deposition is properly recorded in
09:09:28 16 both cases, despite the party's agreement regarding
09:09:36 17 other expert depositions in the Capella vs. Fujitsu
09:09:40 18 case.

09:09:50 19 THE REPORTER: Mr. Gaustad, you need to
09:09:51 20 unmute.

09:09:55 21 MR. GAUSTAD: Oh, I have no further
09:09:56 22 comment.

09:09:57 23 THE REPORTER: Shall I swear the witness?

09:10:01 24 MR. GAUSTAD: Yes, please.

09:10:10 25

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1 ALEXANDER VLADIMIR SERGIENKO, Ph.D.,
2 having been first duly sworn, was
3 examined and testified as follows:

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5 EXAMINATION

6 BY MR. GAUSTAD:

09:10:21 7 Q Going morning, Dr. Sergienko.

09:10:25 8 A Good morning.

09:10:25 9 Q Would you please state your full name for
09:10:26 10 the record.

09:10:26 11 A Alexander Vladimir Sergienko.

09:10:29 12 Q And I've put what's been marked as
09:10:32 13 Exhibit 1 to the Shared Exhibit folder.

09:10:35 14 Could you please pull up Exhibit 1.

09:10:37 15 A Yes, I have it.

09:10:37 16 (Deposition Exhibit # was marked for
09:10:37 17 identification and is attached hereto.)

09:10:38 18 BY MR. GAUSTAD:

09:10:38 19 Q And do you recognize Exhibit 1?

09:10:39 20 A Yes, I do.

09:10:40 21 Q And what is Exhibit 1?

09:10:43 22 A Exhibit 1, it's defendants notice of
09:10:45 23 deposition of expert Dr. Alexander V Mr. Sergienko.

09:10:50 24 Q And towards the top of the first page do

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13:14:00 4 properly the circulators are not required and to
13:14:05 5 deliver in the claims of the patent, the circulators
13:14:06 6 are not required.

13:14:10 7 In fact, it was taught that it's the
13:14:13 8 circulators, it's a negative feature, addition of
13:14:16 9 separate devices that needs to be avoided, and that's
13:14:19 10 what the design proven to do that, so --

13:14:38 11 BY MR. GAUSTAD:

13:14:38 12 Q All right. Let's go to page 16 of your
13:14:43 13 validity report, which is Exhibit 2.

13:14:45 14 A Page 16, okay.

13:14:48 15 MR. BECKER: Object. Form.

13:14:55 16 THE WITNESS: Okay, I'm on page 16.

13:14:57 17 BY MR. GAUSTAD:

13:14:57 18 Q And this is physical page 16, it's PDF
13:15:00 19 page 21.

13:15:05 20 A Sometimes it's easier to say the paragraph
13:15:08 21 number.

13:15:08 22 Q Yeah, sorry, it's paragraph 59.
13:15:11 23 Do you see that?

13:15:11 24 A Yes, I do.

13:15:11 25 Q And here you opine that Capella has shown

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13:15:14 1 reasonable diligence from November 28, 2000, to a

13:15:24 2 constructive reduction of practice.

13:15:21 3 A Yes, it's stated here that way, yes.

13:15:23 4 Q And that constructive reduction of

13:15:26 5 practice date is March 19, 2001?

13:15:29 6 A That's what it states, yes.

13:15:31 7 Q So is it your opinion that Capella has

13:15:34 8 shown that it was reasonably diligent from November 28,

13:15:37 9 2000, to March 19, 2001?

13:15:41 10 A That's correct.

13:15:56 11 Q And I've made Exhibit 14 available in the

13:15:58 12 Shared Exhibit folder. Just let me know when you have

13:16:01 13 that open.

13:16:05 14 A Yes.

13:16:05 15 (Deposition Exhibit 14 was marked

13:16:05 16 for identification and is attached

13:16:06 17 hereto.)

13:16:06 18 BY MR. GAUSTAD:

13:16:07 19 Q And I represent that Exhibit 14 is

13:16:09 20 comprised of calendar pages showing November 2000,

13:16:14 21 December 2000, and January 2001.

13:16:18 22 A Right.

13:16:19 23 Q Do you happen what any of the inventors

13:16:25 24 were doing to November 29th?

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13:16:26 25 A No, I have no knowledge of that.

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13:16:28 1 Q Do you know what any of the inventors were
13:16:30 2 doing on November 30th?

13:16:33 3 A No, I don't have any knowledge of this,
13:16:35 4 either.

13:16:36 5 Q And let's look at the second page of
13:16:41 6 Exhibit 14, which is the calendar for December 2000.

13:16:46 7 A Yes, I can see -- I look at the
13:16:50 8 December 2000.

13:16:51 9 Q Do you know what any of the inventors
13:16:56 10 were --

13:16:56 11 A Sorry, I lost -- can you repeat the
13:16:59 12 question please.

13:17:00 13 MR. BECKER: Object. Form.

13:17:01 14 BY MR. GAUSTAD:

13:17:01 15 Q Do you know what any of the inventors were
13:17:04 16 doing on December 1st?

13:17:05 17 A No, I don't have any idea.

13:17:06 18 Q Do you know what any of the inventors were
13:17:08 19 doing on December 2nd?

13:17:09 20 A No.

13:17:11 21 MR. BECKER: Object. Form.

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13:17:12 22 BY MR. GAUSTAD:

13:17:13 23 Q Do you know what any of the inventors were

13:17:14 24 doing during any day of the following week between

13:17:18 25 December 3rd and December 9th?

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13:17:20 1 MR. BECKER: Object. Form.

13:17:21 2 THE WITNESS: No, I have no information

13:17:23 3 about that.

13:17:24 4 BY MR. GAUSTAD:

13:17:25 5 Q Do you know what any of the inventors were

13:17:26 6 doing during any day of the following week between

13:17:30 7 December 10th and December 16th?

13:17:32 8 MR. BECKER: Object. Form.

13:17:33 9 THE WITNESS: No, I don't have information

13:17:35 10 about that.

13:17:36 11 BY MR. GAUSTAD:

13:17:36 12 Q Do you know what any of the inventors were

13:17:38 13 doing during any day of the following week between

13:17:41 14 December 17th and December 23rd?

13:17:44 15 MR. BECKER: Object. Form.

13:17:46 16 THE WITNESS: No, I don't have information

13:17:48 17 about that.

13:17:48 18 BY MR. GAUSTAD:

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13:17:49 19 Q Do you know what any of the inventors were

13:17:51 20 doing during the -- any day of the following week

13:17:53 21 between December 24th and December 30th?

13:17:59 22 MR. BECKER: Object. Form.

13:18:00 23 THE WITNESS: No, I don't have information

13:18:01 24 about that.

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13:18:02 1 BY MR. GAUSTAD:

13:18:07 2 Q And the next week runs from December 31st

13:18:08 3 to January 6th; correct?

13:18:11 4 A That's correct.

13:18:16 5 MR. BECKER: Object. Form.

13:18:18 6 BY MR. GAUSTAD:

13:18:18 7 Q Do you know what any of the inventors were

13:18:20 8 doing during any day of the week of December 31st to

13:18:24 9 January 6th?

13:18:24 10 MR. BECKER: Object. Form.

13:18:24 11 THE WITNESS: No, I don't have information

13:18:26 12 about -- about that.

13:18:27 13 BY MR. GAUSTAD:

13:18:28 14 Q Do you know what any of the inventors were

13:18:30 15 doing during any day of the following week between

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13:18:32 16 January 6th and January 13th?

13:18:36 17 MR. BECKER: Object. Form.

13:18:38 18 THE WITNESS: No, I don't have

13:18:38 19 information.

13:18:39 20 BY MR. GAUSTAD:

13:18:41 21 Q And the provisional application was filed

13:18:42 22 on January 19th, which is the following Friday;

13:18:47 23 correct?

13:18:47 24 MR. BECKER: Object. Form.

13:18:47 25 THE WITNESS: Well, based on the calendar

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13:18:50 1 and the date on the submission, I believe so.

13:18:53 2 BY MR. GAUSTAD:

13:18:54 3 Q And do you know what any of the inventors

13:18:57 4 were doing during any day of the following week between

13:19:01 5 January 14th and January 18th?

13:19:03 6 MR. BECKER: Object. Form.

13:19:04 7 THE WITNESS: No, I don't have information

13:19:05 8 about that.

13:19:06 9 BY MR. GAUSTAD:

13:19:08 10 Q So the critical period that we just

13:19:09 11 discussed spans more than seven weeks; correct?

13:19:13 12 A Correct.

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13:19:13 13 Q And you can not identify any specific
13:19:19 14 activity being performed by the inventors on any of
13:19:23 15 those days; correct?

13:19:24 16 MR. BECKER: Object. Form.

13:19:25 17 THE WITNESS: I'm identifying activities
13:19:29 18 based on documents presented in the provisional
13:19:33 19 application with signatures and dates.

13:19:36 20 BY MR. GAUSTAD:

13:19:36 21 Q And on what days between November 28,
13:19:40 22 2000, and January 19, 2001, can you identify any
13:19:44 23 specific activities performed by the inventors?

13:19:48 24 A I believe at least --

13:19:49 25 MR. BECKER: Object. Form.

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13:19:50 1 THE WITNESS: -- two other dates have been
13:19:52 2 listed there with the signatures.

13:19:54 3 BY MR. GAUSTAD:

13:19:59 4 Q And which dates are those?

13:20:01 5 A I have to consult with the document. If
13:20:03 6 you allow me, I'll go back to the document and I will
13:20:07 7 find it.

13:20:08 8 Q Sure. Let's go back to Exhibit 2.

13:20:41 9 A Well, the one definite day, it's

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13:20:45 10 December 28, 2000, and if I remember correctly also on
13:20:51 11 the -- on some of the figures, there is a date in
13:20:53 12 January is also listed. It's not listed in this table,
13:20:58 13 but if we go to the evidence of the provisional
13:21:03 14 application with figures and assigned figures, there
13:21:08 15 was somewhere, I believe one more date in January, so
13:21:11 16 there are at least two other documentary identified
13:21:16 17 occasions exist, and document -- document.

13:21:23 18 Q So let's look at page 34 of the PDF of
13:21:29 19 Exhibit 13, which is the provisional application, and
13:21:33 20 this has 632 in the lower right-hand corner.

13:21:38 21 A Okay. Just a second. 632. I'll just
13:21:50 22 scroll back. 632, yes, I am on this page.

13:22:01 23 Q And do you see the signature of any of the
13:22:04 24 named inventors on this page?

13:22:06 25 A Yes, I do.

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13:22:07 1 Q And whose signature do you see?

13:22:13 2 A Jeffrey Wilde.

13:22:14 3 Q And do you know if Jeffrey Wilde did
13:22:21 4 anything on November 28, 2000, except sign this
13:22:24 5 signature page?

13:22:24 6 A No, I don't know what he was doing that

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13:22:27 7 day. I don't have information about that but I can see
13:22:33 8 that he signed this document.

13:22:35 9 Q And do you know what Tai Chen was doing on
13:22:38 10 November 28, 2000?

13:22:38 11 A No, I don't have information about that.

13:22:44 12 Q Do you know what Joseph Davis was doing on
13:22:46 13 November 28, 2000?

13:22:48 14 A I don't have information about that. I'm
13:22:51 15 evaluating the technical meaning of this drawing and
13:22:55 16 its match to the claims.

13:23:00 17 Q But you're also opining that the inventors
13:23:03 18 were diligent; correct?

13:23:04 19 A That's correct, and I consist issues on
13:23:09 20 dates on this one and on some other on occasions in
13:23:11 21 January -- in December.

13:23:18 22 Q And let's look down on page 37 -- or I'm
13:23:24 23 sorry this might be PDF page 38 but it has the number
13:23:27 24 636 in the lower right-hand corner?

13:23:28 25 A Yes.

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13:23:29 1 Q And do you see the signature of any named
13:23:32 2 inventor on this page?

13:23:33 3 A I can see Joseph Davis signature on

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13:23:37 4 December 28, 2000.

13:23:41 5 Q Do you know what else Joseph Davis was

13:23:43 6 doing on December 28, 2000, aside from signing this

13:23:47 7 page?

13:23:48 8 A I don't have --

13:23:48 9 MR. BECKER: Object. Form.

13:23:49 10 THE WITNESS: I don't have this

13:23:50 11 information.

13:23:50 12 BY MR. GAUSTAD:

13:23:50 13 Q Do you know what Jeffrey Wilde was doing

13:23:53 14 on December 28, 2000?

13:23:55 15 A No, I don't have this information.

13:23:58 16 Q Do you know what Tai Chen was doing on

13:24:03 17 December 28, 2000?

13:24:04 18 A I don't have this information.

13:24:11 19 I have a document with technical

13:24:14 20 parameters signed and dated.

13:24:16 21 Q So during the critical period you can only

13:24:19 22 identify specific activity on two or three days;

13:24:24 23 correct?

13:24:24 24 MR. BECKER: Object. Form.

13:24:25 25 THE WITNESS: I can identify specific

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13:24:27 1 activities and technical development that occurred
13:24:30 2 during that period by comparing the designs and
13:24:34 3 progress of the design.

13:24:36 4 BY MR. GAUSTAD:

13:24:36 5 Q And how do you know that those
13:24:38 6 developments occurred during this period?

13:24:40 7 A By dates attached to them.

13:24:48 8 Q But how do you know that those dates
13:24:51 9 indicate that the developments occurred during that
13:24:54 10 period?

13:24:57 11 A Well, the dates indicate on which date
13:25:01 12 particular this particular development has been
13:25:03 13 presented -- kind of documented, and there is a
13:25:07 14 progression in the technical development between
13:25:09 15 documents leading to the filing of applications so
13:25:16 16 that's what it is.

13:25:19 17 Earlier dates have earlier development and
13:25:22 18 more and more and then final application formulated, so
13:25:27 19 that's -- that's what I would consider technical
13:25:30 20 development.

13:25:31 21 Q Couldn't the inventors have developed this
13:25:34 22 before this information was presented?

13:25:37 23 A I don't know. It's -- it's beyond my
13:25:44 24 capability to evaluate technical matter and facts.

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13:25:50 25 Q So you don't know when the named inventors
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13:25:53 1 actually developed the information contained on these

13:25:55 2 pages; correct?

13:25:57 3 MR. BECKER: Object. Form.

13:25:58 4 THE WITNESS: I only know that here's a

13:26:02 5 drawing -- technical drawing and the date attached to

13:26:04 6 it. It's a formal document. That's what I consider,

13:26:08 7 and it's a fact. All the rest, it's a speculations,

13:26:12 8 and I'm not ready to speculate.

13:26:16 9 BY MR. GAUSTAD:

13:26:17 10 Q So you would be speculating about whether

13:26:19 11 the named inventors had developed this technology prior

13:26:23 12 to the dates on these pages; correct?

13:26:24 13 MR. BECKER: Object. Form.

13:26:25 14 THE WITNESS: I would not speculate like

13:26:28 15 that.

13:26:29 16 BY MR. GAUSTAD:

13:26:30 17 Q But I ask -- if I asked you to

13:26:32 18 speculate -- strike that.

13:26:33 19 But if I asked you when the named

13:26:35 20 inventors had actually developed the technology shown

13:26:39 21 on these pages, you would be speculating; correct?

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13:26:41 22 MR. BECKER: Object. Form.

13:26:42 23 THE WITNESS: I'm not speculating on

13:26:47 24 anything. I see the document, I see the date attached

13:26:50 25 to it, for me, this is a fact. I evaluate this fact.

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13:26:54 1 I'm not speculating anything else, and all my

13:26:57 2 statements are within the framework of technical

13:27:01 3 evaluation of the facts.

13:27:07 4 BY MR. GAUSTAD:

13:27:07 5 Q And so if you see a signature dated

13:27:11 6 November 28, 2000, what is the fact?

13:27:15 7 A Well, the fact --

13:27:17 8 MR. BECKER: Object. Form.

13:27:17 9 THE WITNESS: The fact is that this person

13:27:19 10 presented this document and to verify the date his or

13:27:28 11 her assigned this date and carries responsibility of --

13:27:33 12 for this action. So I assume that on that date this

13:27:36 13 has been presented; now it becomes a document, valid

13:27:40 14 document, for consideration, not for speculation but

13:27:43 15 for consideration, technical consideration because --

13:27:48 16 BY MR. GAUSTAD:

13:27:48 17 Q That the --

13:27:46 18 A -- it's a valid document.

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13:27:48 19 Q I'm sorry, Dr. Sergienko.

13:27:50 20 A Sorry about that.

13:27:56 21 Q But that date doesn't inform you when the

13:27:59 22 named inventors actually developed the subject matter

13:28:02 23 contained on these slides; correct?

13:28:05 24 MR. BECKER: Object. Form.

13:28:05 25 THE WITNESS: I don't believe it's

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13:28:11 1 relevant to this issue when they developed, if they

13:28:14 2 developed it earlier, that's okay, but they -- it's

13:28:17 3 meaningless, the document says this particular date.

13:28:21 4 That's it.

13:28:27 5 BY MR. GAUSTAD:

13:28:27 6 Q Are you aware that Jeffrey Wilde was

13:28:30 7 deposed in this case?

13:28:31 8 A Yeah, I was aware of that.

13:28:32 9 Q Have you reviewed Jeffrey Wilde's

13:28:36 10 depositions transcript?

13:28:37 11 A Not -- not yet.

13:28:39 12 Q Wouldn't have you expected Jeffrey Wilde's

13:28:45 13 deposition transcript to have information about when he

13:28:50 14 conceived of the asserted claims?

13:28:50 15 MR. BECKER: Object. Form.

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13:28:50 16 THE WITNESS: I don't know. I have to
13:28:52 17 read it, review it, and then I'll give you the answer.

13:28:54 18 BY MR. GAUSTAD:

13:28:59 19 Q There are a reason you didn't review
13:29:02 20 Jeffrey Wilde's deposition transcript prior to signing
13:29:04 21 and submitting your report?

13:29:05 22 A Well, there were lots of other documents,
13:29:07 23 the list of exhibit was huge. I had to form this
13:29:11 24 document over a relatively short period of time.
13:29:14 25 It's -- I was asked to answer technical questions, and
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13:29:17 1 I just used formal documents to form my opinion. The
13:29:24 2 depositions of all the inventors and -- I will review
13:29:30 3 it at some other point because even if someone claimed
13:29:35 4 to invent it earlier, it doesn't change things.

13:29:39 5 It does not alter this document
13:29:42 6 whatsoever. The document is the document. It states
13:29:44 7 the date, and that's what I considered.

13:29:49 8 Q So because of the short amount of time you
13:29:51 9 had to prepare your report you did not consider Jeffrey
13:29:54 10 Wilde's deposition transcript?

13:29:56 11 THE WITNESS: I didn't review it.

13:29:57 12 MR. BECKER: Object. Form.

14 - DrAlexanderVSergienko_Rough

13:29:57 13 THE WITNESS: I know it's -- this -- but I

13:30:00 14 didn't review it in detail because I was asked to

13:30:03 15 evaluate the technical issues regarding to the

13:30:10 16 Dr. Lebby's report and that's what I was evaluating,

13:30:14 17 arguing about that.

13:30:15 18 BY MR. GAUSTAD:

13:30:15 19 Q Are you aware that Tai Chen was deposed in

13:30:18 20 this case?

13:30:19 21 A Yes, I am aware of that. I know that that

13:30:23 22 deposition will exist. I saw the list of depositions.

13:30:29 23 Q And did you review Tai Chen's deposition

13:30:32 24 transcript before signing and submitting your report?

13:30:34 25 A No, I didn't review it.

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13:30:36 1 Q Wouldn't you expect Tai Chen's deposition

13:30:39 2 transcript to have information about when he conceived

13:30:41 3 of the asserted claims?

13:30:43 4 A What -- what -- could you repeat --

13:30:46 5 clarify your question. I didn't get the question.

13:30:48 6 Q Sure. Wouldn't you expect Tai Chen's

13:30:51 7 deposition transcript to have information about when he

13:30:55 8 conceived of the asserted claims?

13:30:56 9 A Oh, definitely --

14 - DrAlexanderVSergienko_Rough

13:30:57 10 MR. BECKER: Object. Form.

13:30:58 11 THE WITNESS: -- he probably been asked

13:30:59 12 and would answer, but it would not change at all what I

13:31:03 13 would say here because unless it's supported by the

13:31:07 14 valid document, it's just words and opinion and

13:31:12 15 speculation.

13:31:12 16 BY MR. GAUSTAD:

13:31:13 17 Q And are you aware that Joseph Davis was

13:31:15 18 deposed in this case?

13:31:16 19 A Yes, I am aware of that.

13:31:17 20 Q And did you review Joseph Davis's

13:31:20 21 deposition transcript before signing and submitting

13:31:22 22 your report?

13:31:23 23 A No, I didn't review it.

13:31:26 24 Q And wouldn't you expect Joseph Davis's

13:31:30 25 deposition transcript to have information about when he

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13:31:32 1 conceived of the asserted claims?

13:31:34 2 A Probably but again --

13:31:35 3 MR. BECKER: Object. Form.

13:31:36 4 THE WITNESS: -- it wouldn't change the

13:31:37 5 document that we have here in front of us right now.

13:31:52 6 MR. GAUSTAD: We've been going about an

14 - DrAlexanderVSergienko_Rough

13:31:54 7 hour, Dr. Sergienko, do you need a break?

13:31:56 8 THE WITNESS: Yeah, I can use one.

13:31:57 9 MR. GAUSTAD: Oh, let's go off the record.

13:32:00 10 THE WITNESS: Thank you. 10 minutes?

13:32:03 11 MR. GAUSTAD: Sure, 10 minutes.

13:32:05 12 VIDEOGRAPHER MILLER: Standby. This marks

13:32:05 13 the end of media number three. Going off the record at

13:32:08 14 4:32 p.m. Eastern.

13:32:12 15 (Recess taken.)

13:42:23 16 VIDEOGRAPHER MILLER: We are back on the

13:43:09 17 record at 4:43 p.m. Eastern, and this marks the

13:43:13 18 beginning of media number four of the deposition of

13:43:16 19 Dr. Alexander Sergienko.

13:43:18 20 You may proceed, Counsel.

13:43:28 21 BY MR. GAUSTAD:

13:43:29 22 Q Welcome back, Dr. Sergienko.

13:43:30 23 Did you speak with anyone during the

13:43:32 24 break?

13:43:32 25 A Yes, I did speak with my counsel.

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13:43:35 1 Q And did you discuss the substance of your

13:43:39 2 testimony with counsel during the break?

13:43:40 3 MR. BECKER: And I instruct you not to

14 - DrAlexanderVSergienko_Rough

13:43:42 4 answer on the basis of privilege any questions about
13:43:45 5 the content of communications.

13:43:47 6 THE WITNESS: So I will follow this
13:43:49 7 advice.

13:43:51 8 BY MR. GAUSTAD:

13:43:51 9 Q And, Dr. Sergienko, I have to apologize
13:43:53 10 when I was asking you earlier questions for some reason
13:43:55 11 I personally conflated January 19th with March 19,
13:44:02 12 2001, and March 19, 2001, was actually when the
13:44:05 13 provisional application was filed, not January 19,
13:44:09 14 2001, so I just want to go back and ask you some more
13:44:12 15 questions about the periods specifically between
13:44:16 16 January 19, 2001, and March 19, 2001.

13:44:19 17 A Okay.

13:44:20 18 Q So let's go back to Exhibit 14, which was
13:44:24 19 the calendar, and let's go to page three which shows
13:44:29 20 dates in January 2001.

13:44:32 21 A Right.

13:44:33 22 Q And do you know what any of the names
13:44:35 23 inventors were doing on January 20, 2001?

13:44:41 24 MR. BECKER: Object. Form.

13:44:42 25 THE WITNESS: Not on this particular date.

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13:44:44 1 January 20th is a Saturday. Probably -- I don't know.

13:44:46 2 They were starting the company and working hard, I

13:44:49 3 don't know whether they took weekends, as well.

13:44:52 4 BY MR. GAUSTAD:

13:44:54 5 Q And do you know what any of the named

13:44:57 6 inventors were doing on any specific day between

13:45:00 7 January 21st and January 27th?

13:45:02 8 MR. BECKER: Object. Form.

13:45:02 9 THE WITNESS: I don't have any special

13:45:04 10 information about that. I just know that they were --

13:45:10 11 the Capella was a developing company, new company, and

13:45:13 12 they were preparing, I guess, the provisional that was

13:45:17 13 filed in March and to file the full blown provisional,

13:45:24 14 it's a large piece of work. It's more than a week or

13:45:27 15 two-week's work, so I assumed they were working on

13:45:30 16 that, whether full-time, not full-time, I don't know,

13:45:32 17 but it's very serious exercise and lots of effort needs

13:45:37 18 to be put in there.

13:45:38 19 BY MR. GAUSTAD:

13:45:38 20 Q Do you know when the named inventors were

13:45:40 21 drafting the provisional application?

13:45:42 22 A Well, I assume between the last date on

13:45:47 23 the documents available in January and filing in March.

13:45:54 24 Q You're speculating when you give that

14 - DrAlexanderVSergienko_Rough

13:45:56 25 answer; correct?

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13:45:57 1 A I can see --

13:45:59 2 MR. BECKER: Object. Form.

13:46:00 3 THE WITNESS: Yeah, well, I -- partially,

13:46:02 4 yes, I'm speculating based on the development of the

13:46:05 5 document. If you compare the evidence from November

13:46:11 6 and December and January and compare the provisional

13:46:18 7 application in March you would see tremendous progress

13:46:23 8 in both description and graphical development of

13:46:27 9 technical elements, additional elements, organization

13:46:31 10 of elements, and development of technical principle,

13:46:35 11 principles, this is a huge amount of work, as an

13:46:41 12 experimentalist myself, I can speculate how much

13:46:45 13 efforts and time went into the development of these

13:46:51 14 things.

13:46:51 15 BY MR. GAUSTAD:

13:46:51 16 Q Well, let's go back to Exhibit 13.

13:47:01 17 A Yes, I'm on the Exhibit 13.

13:47:03 18 Q And let's look at page two of the PDF,

13:47:05 19 which has the number 600 in the lower right-hand

13:47:08 20 corner.

13:47:08 21 A Yes, I am here.

14 - DrAlexanderVSergienko_Rough

13:47:09 22 Q Do you know when this page of the
13:47:12 23 provisional application was drafted?

13:47:13 24 MR. BECKER: Object. Form.

13:47:15 25 THE WITNESS: No, I know when it was

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13:47:18 1 filed.

13:47:20 2 BY MR. GAUSTAD:

13:47:20 3 Q And let's go down to the third PDF page,
13:47:24 4 which has 601 in the bottom right-hand corner.

13:47:27 5 A Yes.

13:47:27 6 Q Do you know when this page of the
13:47:29 7 provisional application was drafted?

13:47:31 8 A I don't know specific date --

13:47:33 9 MR. BECKER: Object. Form.

13:47:33 10 THE WITNESS: -- when it was drafted, but
13:47:35 11 it takes amount of time and efforts to draft this.

13:47:38 12 BY MR. GAUSTAD:

13:47:38 13 Q And let's go to page four of the PDF,
13:47:40 14 which has 602 in the bottom right-hand corner.

13:47:47 15 Do you think when this page of the
13:47:48 16 provisional application was drafted?

13:47:50 17 A I don't know --

13:47:50 18 MR. BECKER: Object. Form.

14 - DrAlexanderVSergienko_Rough

13:47:51 19 THE WITNESS: I don't know exactly

13:47:53 20 specific date when it was drafted, but it's a very nice

13:47:57 21 written document.

13:47:57 22 BY MR. GAUSTAD:

13:47:57 23 Q And let's go down to PDF page five, which

13:48:00 24 has 603 in the bottom right-hand corner.

13:48:04 25 Do you know when this specific page of the
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13:48:06 1 provisional application was drafted?

13:48:06 2 A No, I don't know when -- which -- when it

13:48:11 3 was drafted, but obviously not in one day, that would

13:48:15 4 be impossible.

13:48:15 5 Q It would be impossible to draft one page

13:48:17 6 of a document in one day?

13:48:18 7 A Because one page is a reflection of the

13:48:26 8 technology development over -- could be a couple of

13:48:29 9 months, two, three months, because if you look at the

13:48:32 10 technology drawings prior to that in the November and

13:48:36 11 December and if you look at the technology drawings

13:48:40 12 from the -- from this document, from the filing date,

13:48:45 13 you would see tremendous technical advancement and

13:49:03 14 quality enhancement, and this never comes easy or fast.

13:48:56 15 You have to do significant due diligence to develop

14 - DrAlexanderVSergienko_Rough

13:49:01 16 that.

13:49:05 17 Q Objection. Nonresponsive.

13:49:07 18 Do you know how long it took someone to

13:49:08 19 draft this specific page of the provisional

13:49:12 20 application?

13:49:12 21 MR. BECKER: Object. Form.

13:49:14 22 THE WITNESS: Again, drafting the page

13:49:17 23 doesn't mean just to type. To type it, it probably

13:49:19 24 takes -- I don't know -- 20 minute's to type up, but

13:49:23 25 the question is what to type, what technical content

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13:49:28 1 you will put in there. The development of that content

13:49:30 2 takes significant amount of time in engineering.

13:49:30 3 BY MR. GAUSTAD:

13:49:43 4 Q Let's go back to Exhibit 14, which was the

13:49:52 5 November 2000 and January 2001 calendar --

13:49:52 6 A Right.

13:49:55 7 Q -- and let's go to page three and do you

13:50:03 8 know what specifically any of the named inventors were

13:50:06 9 doing between January 28th and January 31st?

13:50:10 10 A Not in particular, I don't have this

13:50:13 11 specific information.

13:50:18 12 Q And I've introduced Exhibit 15, just let

14 - DrAlexanderVSergienko_Rough

13:50:21 13 me know when you have that open.

13:50:29 14 A I have it.

13:50:29 15 (Deposition Exhibit 15 was marked

13:50:29 16 for identification and is attached

13:50:30 17 hereto.)

13:50:30 18 BY MR. GAUSTAD:

13:50:30 19 Q And I'll represent that this is a calendar

13:50:32 20 accurately reflecting the dates in February 2001.

13:50:38 21 Dr. Sergienko, do you know what any of the

13:50:39 22 names inventors were doing on any specific day between

13:50:44 23 February 1st and February 3rd, 2001?

13:50:46 24 MR. BECKER: Object. Form.

13:50:47 25 THE WITNESS: I don't have specific

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13:50:48 1 information.

13:50:48 2 BY MR. GAUSTAD:

13:50:48 3 Q Do you know what any of the named

13:50:51 4 inventors were specifically doing on any day

13:50:54 5 February 4th and February 10th, 2001?

13:50:58 6 A I didn't have --

13:51:00 7 MR. BECKER: Object. Form.

13:51:00 8 THE WITNESS: I didn't have specific

13:51:02 9 information.

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13:51:02 10 BY MR. GAUSTAD:

13:51:02 11 Q Do you have any specific information about
13:51:05 12 what any named inventor was doing on any day between
13:51:11 13 February 11th and February 17th, 2001?

13:51:13 14 MR. BECKER: Object. Form.

13:51:14 15 THE WITNESS: I don't have factual
13:51:15 16 information, I just could guess that they were
13:51:17 17 developing the provisional.

13:51:19 18 BY MR. GAUSTAD:

13:51:19 19 Q Do you have any information about what any
13:51:21 20 named inventor was specifically doing on any day
13:51:25 21 between February 18th and February 24th, 2001?

13:51:28 22 MR. BECKER: Object. Form.

13:51:29 23 THE WITNESS: I don't have specific
13:51:30 24 information about that.

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13:51:31 1 BY MR. GAUSTAD:

13:51:32 2 Q Do you have any information about what any
13:51:34 3 named inventor was specifically doing between
13:51:37 4 February 25th and February 28th, 2001?

13:51:47 5 MR. BECKER: Object. Form.

13:51:48 6 THE WITNESS: I don't have any specific

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13:51:49 7 information about that.

13:51:51 8 BY MR. GAUSTAD:

13:51:55 9 Q And I'm introducing Exhibit 16 in the
13:51:57 10 record. Just let me know when you have it open.

13:52:09 11 A Yes, I have it open.

13:52:09 12 (Deposition Exhibit 16 was marked
13:52:09 13 for identification and is attached
13:52:10 14 hereto.)

13:52:10 15 BY MR. GAUSTAD:

13:52:10 16 Q And I'll represent that Exhibit 16 is a
13:52:14 17 calendar accurately showing the days in March 2001.

13:52:18 18 Dr. Sergienko, do you know what any of the
13:52:18 19 named inventors were specifically doing on any day
13:52:21 20 between March 1st and March 3rd, 2001?

13:52:24 21 MR. BECKER: Object. Form.

13:52:24 22 THE WITNESS: I don't have specific
13:52:25 23 information about that.

13:52:26 24 BY MR. GAUSTAD:

13:52:27 25 Q Do you know what any named inventor was

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13:52:30 1 specifically doing on any day between March 4th and
13:52:34 2 March 10th, 2001?

13:52:36 3 MR. BECKER: Object. Form.

14 - DrAlexanderVSergienko_Rough

13:52:37 4 THE WITNESS: I don't have specific

13:52:39 5 information about that.

13:52:40 6 BY MR. GAUSTAD:

13:52:40 7 Q Do you know with a any named inventor was

13:52:42 8 doing on any specific day between March 11th and

13:52:45 9 March 17th, 2001?

13:52:48 10 A I don't have --

13:52:49 11 MR. BECKER: Object. Form.

13:52:51 12 THE WITNESS: I don't have a specific

13:52:51 13 information but I could guess as a person submitting

13:52:55 14 lots of documents in my life, I think they were trying

13:52:58 15 to frantically finish and polish the application.

13:53:05 16 BY MR. GAUSTAD:

13:53:05 17 Q But do you know that?

13:53:06 18 A I don't know this for a fact. That would

13:53:08 19 be my guess.

13:53:08 20 Q So you're speculating?

13:53:10 21 A I'm speculating --

13:53:12 22 MR. BECKER: Object. Form.

13:53:12 23 THE WITNESS: -- based on my own

13:53:15 24 experience of submitting similar documents.

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13:53:17 1 BY MR. GAUSTAD:

13:53:22 2 Q And do you know what any of the named

13:53:24 3 inventors were doing on March 18, 2001?

13:53:31 4 A I don't have specific information about

13:53:32 5 that. It's Sunday. I don't know.

13:53:41 6 Q All right. Let's go back to Exhibit 2,

13:53:43 7 which is your validity report, and let's look at

13:53:50 8 paragraph 72, which is on PDF page, I think 23, it has

13:54:02 9 18 at the bottom.

13:53:58 10 A Yeah, paragraph 72, I am on it.

13:54:03 11 Q And here you have the phrase "multiple

13:54:08 12 surfaces that parallelly displace relative to each

13:54:15 13 other to create a defraction grating" in quotation

13:54:19 14 marks; is that correct?

13:54:20 15 A That's correct.

13:54:20 16 Q And what are you quoting there?

13:54:25 17 MR. BECKER: Object. Form.

13:54:28 18 THE WITNESS: I have to verify the -- to

13:54:36 19 consult with the specification of the patent. I'm

13:54:42 20 trying to remember whether this is in the specification

13:54:43 21 of the patent or it's from some other document. I'm

13:54:51 22 not sure exactly from which document but I can

13:54:55 23 double-check the specification because --

13:55:01 24 Well, this is true fact that reflective

14 - DrAlexanderVSergienko_Rough

14:53:38 4 Doctor, please. Is there anything that counsels or the

14:53:40 5 court reporter would like to put on the record only

14:53:42 6 before I close the record?

14:53:46 7 MR. BECKER: No, thank you.

14:53:47 8 MR. GAUSTAD: No, thank you.

14:53:48 9 VIDEOGRAPHER MILLER: Okay, thank you.

14:53:48 10 Standby. This concludes today's deposition of

14:53:50 11 Dr. Alexander Sergienko. Total media used was six.

14:53:54 12 Going off the record at 5:53 p.m. Eastern

14:53:57 13 standard time.

14:53:59 14 (Whereupon, at 2:53 p.m., the

15 deposition of ALEXANDER VLADIMIR

16 SERGIENKO, Ph.D., was adjourned.)

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1 DECLARATION

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4 I, ALEXANDER VLADIMIR SERGIENKO, Ph.D.,
5 hereby declare that I am the deponent in the within
6 matter; that I have read the foregoing deposition and
7 know the contents thereof, and I declare that the same
8 is true of my knowledge, except as to the matters which
9 are therein stated.

10 I certify under penalty of perjury of the
11 laws of the State of California that the foregoing is
12 true and correct.

13 Executed this ____ day of_____,
14 2021, at _____, _____.

15

16

17

18

19

20 _____
ALEXANDER VLADIMIR SERGIENKO, Ph.D.

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF LOS ANGELES)

4 I, Vickie Blair, CSR No. 8940, RPR-CRR, in
5 and for the State of California, do hereby certify:

6 That, prior to being examined, the witness
7 named in the foregoing deposition was by me duly sworn
8 to testify as to the truth, the whole truth, and
9 nothing but the truth;

10 That said deposition was taken before me
11 at the time and place therein set forth, and was taken
12 down by me stenographically and thereafter transcribed
13 via computer-aided transcription under my direction and
14 is a true record of the testimony given;

15 I further certify I am neither counsel
16 for, nor related to, any party to said action, nor
17 interested in the outcome thereof;

18 IN WITNESS WHEREOF, I have hereto
19 subscribed my name this [!ORDINALDATE] day of [!MONTH],
20 2021.

21

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Vickie Blair, CSR No. 8940, RPR-CRR

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